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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON AT TACOMA

10 ALEXANDER FLEISCHMANN

11 Plaintiff,

12 v.

13 CITY OF OLYMPIA; ERIC HENRICHSEN
14 individually; SEAN LINDROS individually;
15 T.J. MILAVEC individually; JASON T.
WINNER individually; DOEs 1-5 individually

16 Defendants.
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No. 3:18-cv-05651-RBL

ORDER AWARDING ATTORNEY'S FEES
AND COSTS UNDER 42 U.S.C. §1988 after
acceptance of Rule 68 offer.

19 This matter came before the Court on Plaintiff's Motion for Attorney's Fees and Costs.

20 Dkt. # 17. Having reviewed the Motion, DeCosta declaration, Millikan Declaration, and
21 responsive defense filings, the Court finds as follows:
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23 Plaintiff's accepted an offer of judgment under FRCP 68. The terms of the offer left the
24 determination of reasonable attorney's fees and costs to the Court. Plaintiff's counsel was retained
25 on a contingency basis for retrieval of Plaintiff's vehicle after warrantless seizure during a protest
26 and prosecution of claims for violation of First and Fourth Amendment rights, as well as

1 negligence. Plaintiff requests an award of \$15,745.74, of which \$71.85 are costs, as prevailing
2 party under 42 U.S.C. § 1988.

3 42 U.S.C. § 1988(b) authorizes federal district courts to, in their “discretion, ... allow the
4 prevailing party . . . a reasonable attorney's fee as part of the costs” for actions on Section 1983.
5 “[W]here the underlying statute defines ‘costs’ to include attorney's fees, ...such fees are to be
6 included as costs for purposes of Rule 68.” *Marek v. Chesny*, 473 U.S. 1, 9 (1985). “[A]ttorney’s
7 fees” includes awards for the fees of “paralegals and law...clerks....” *Missouri v. Jenkins*, 491
8 U.S. 274, 286 (1989).

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10 **I. Reasonable Hourly Rate.**

11 For lodestar purposes, reasonable “billing rates ‘should be established by reference to the
12 fees that private attorneys of an ability and reputation comparable to that of prevailing counsel
13 charge their paying clients for legal work of similar complexity.’” *Welch v. Metro. Life Ins. Co.*,
14 480 F.3d 942, 946 (9th Cir. 2007). The Western District of Washington is the relevant legal
15 community within which to compare rates. See e.g. *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir.
16 1997).

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18 The declaration of Virginia DeCosta indicates that Plaintiff’s counsel’s rates of \$220 per
19 hour and reduced, \$100 per hour, rate for paralegal services performed by counsel are reasonable
20 and on the low end of the prevailing market range for comparable attorneys. Ms. DeCosta is in her
21 29th year of practice in Western Washington. She is highly accomplished in relevant practice areas.
22 Plaintiff’s counsel has also supported the motion with evidence that \$220 and \$100 are the rates
23 charged to his paying clients.
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II. Reasonable Hours Expended.

Billed time must not be “excessive, redundant, or otherwise unnecessary....” *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). District courts will reduce fee awards for excesses such as “unnecessarily duplicative work,” without “double counting” such reductions. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112-15 (9th Cir. 2008). Work performed on unsuccessful claims unrelated to successful claims will also be deducted. See *McCown v. City of Fontana*, 565 F.3d 1097, 1103 (9th Cir. 2009).

Plaintiff's counsel has already culled unnecessary or poorly explained billing items from the motion. Millikan Decl. Ms. DeCosta has reviewed Plaintiff's billing and finds that reasonable time was spent. DeCosta Decl. The case was resolved before any motion practice and all defendants have agreed to take judgment against them on all claims. Dkt. # 17. Further, the record indicates that the nine to ten-month delay between case inception and payment justifies a lodestar multiplier of 1.2.

III. Order

For all the foregoing reasons, the Court finds that the lodestar fee in this case is \$13,049.60 and the reasonable expenses total \$71.85. The total of \$13,121.45 is reasonable. **No multiplier to be applied.** Therefore, a full award of plaintiff's reasonable attorney's fees and costs is hereby ordered in the amount of **\$13,121.45.**

Dated this 21st day of December, 2018.

Ronald B. Lightner

Ronald B. Leighton
United States District Judge